

Pennsylvania PUC Remains Deadlocked over Terminating the Moratorium on Utility Shut-offs

On June 18, 2020, the Pennsylvania Public Utility Commission (PUC or commission) voted 2-2 (along party lines) to maintain its moratorium on utility terminations while Governor Tom Wolf's Proclamation of Disaster Emergency on COVID-19 remains in effect. At its most recent public meeting, held on July 16, 2020, the PUC was again deadlocked on the issue. This time, the commissioners voted 2-2 (and therefore failed to adopt) Chairman Gladys Brown Dutrieuille's motion calling for a stakeholder initiative on the topic. One seat on the PUC is vacant as a result of the unexpected resignation of Democratic Commissioner Andrew Place earlier in the year and it is not anticipated to be filled until later in the year.

Background

Governor Wolf issued his emergency proclamation on March 6, 2020. On March 13, 2020, Chairman Dutrieuille issued an emergency order prohibiting Pennsylvania electric, natural gas, water, wastewater, telecommunications, and steam utilities from terminating service while the emergency proclamation remains in effect, except for safety-related or other reasons approved by the PUC. These utilities were also encouraged to reconnect customers whose service had been previously terminated. The order was unanimously ratified by the PUC on March 26, 2020.

The governor's Proclamation of Disaster Emergency was set to expire on June 4, but the governor extended it for another 90 days. Consequently, the commission must modify its emergency order to terminate the moratorium before the emergency proclamation expires in early September (unless the governor further extends the emergency proclamation).

On June 18, 2020, the PUC failed to adopt Commissioner John F. Coleman, Jr.'s motion calling for an immediate lifting of the moratorium for natural gas distribution companies. For the other utility industries, the moratorium on terminations for non-residential customers would have been lifted on July 1, 2020, and the moratorium on terminations for residential customers would have been lifted on July 15, 2020.

Chairman Dutrieuille's Motion

The chairman expressed interest in moving away from an absolute moratorium on terminations to a "less restrictive phase" with appropriate customer protections. She was concerned that maintaining the moratorium too long may accelerate the accrual of arrearages for many utility customers, placing them at increased risk of default and termination in the future when those bills come due. She encouraged utilities to work with customers before their accounts get to the point that customers cannot overcome the arrearage.

The chairman proposed convening a stakeholder initiative coordinated by the commission's Law Bureau and comprising affected utilities or their representative associations, the public advocates (including the Office of Consumer Advocate and the Office of Small Business Advocate), and representatives of low income households (such as the Pennsylvania Utility Law Project and Community Legal Services). The stakeholders would discuss the appropriate time to end the moratorium on terminations as well as appropriate customer protections to ensure the maintenance of utility service access during the pandemic. The chairman listed some of her ideas on appropriate customer protections for discussion by the stakeholders. The stakeholders initiative was to convene by Monday, July 27 and the Law Bureau was to submit the results to the commission by the following Monday, August 3, 2020.

Vice Chairman David W. Sweet joined Chairman Dutrieuille in voting for the motion. Both the



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chairman and vice chairman are Democrats. The two Republican members of the commission voted against the motion.

Dissenting Statement

Commissioners Coleman and Ralph V. Yanora issued a joint statement opposing the proposed stakeholder initiative. They argued that the commission has already received extensive information in response to a secretarial letter that was sent to all public utilities. They believed the stakeholder process would duplicate that information. They also expressed concern that the group of stakeholders was “incomplete,” potentially resulting in one-sided recommendations in a rushed process.

Instead, Commissioners Coleman and Yanora believed the commission should have provided more leadership by accepting responsibility for the consequences of creating the moratorium. They believed the PUC should have established a clear end date for the moratorium, as well as terms by which utilities can resume terminations. They also argued for a separate stakeholder process to focus on the development of long-term solutions to manage the future impacts of the pandemic on regulated utilities and ratepayers.

Commissioners Coleman and Yanora suggested that the commission should *conditionally* lift the moratorium. They stated:

- “We have also lost the opportunity to formalize certain actions already undertaken by many of our utilities, as a condition for lifting the moratorium.” and
- “Because of this delay, the conditions we might attach to a modification of the moratorium in the future may be very different than what we would have supported today.”

They did not elaborate, however, on this concept of conditionally lifting the moratorium.

What They Didn't Say

Neither the chairman's motion, nor the dissenters' statement, referenced the governor's executive order placing a moratorium on evictions of renters and foreclosures of homeowners. Although the comparisons seem obvious, the governor recently extended that moratorium from July 10 to August 31. Consequently, the comparison did not strongly support either party's position.

The Path Forward

The commissioners will likely consider the moratorium on terminations again at their upcoming public meeting(s), scheduled for August 6 and August 27, 2020. Their decision will no doubt be impacted by changes in the governor's restrictions on activities and by changes in the number of COVID-19 cases in the coming weeks.
